

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;  
Sudeen G. Kelly, Marc Spitzer,  
Philip D. Moeller, and Jon Wellinghoff.

Gas Transmission Northwest Corporation

Docket No. RP06-407-000

ORDER ON INTERLOCUTORY APPEAL

(Issued October 18, 2006)

1. This order grants the interlocutory appeal filed by Gas Transmission Northwest Corporation (GTN) on September 27, 2006, directs the Presiding Administrative Law Judge (ALJ) in Docket No. RP06-407-000 to suspend formal discovery on any issues set for technical conference, and clarifies the Commission's July 31, 2006 suspension order in Docket No. RP06-407-000.<sup>1</sup>

**Background**

2. On July 31, 2006, the Commission issued a suspension order on GTN's general section 4 rate filing in Docket No. RP06-407-000. The Commission established a hearing to examine the typical rate case issues including cost allocation, cost of service and rate design. The order also established a technical conference to examine issues concerning market-based rates for long-haul interruptible transportation, flexible service rates, general terms and conditions, and implementation of the terms of a 1996 settlement affecting turnback capacity and billing determinants. Because certain of these issues were fundamental to the development of GTN's rates, the Commission held the hearing in abeyance pending the outcome of the technical conference. Ordering Paragraph (C) of the order directed Staff to report the results of the technical conference to the Commission within 150 days of the order. Ordering Paragraph (E) held the hearing and litigation time track in abeyance pending the outcome of the issues set for technical conference. In addition, Ordering Paragraph (E) also stated that "[n]evertheless, the

---

<sup>1</sup> *Gas Transmission Northwest Corporation*, 116 FERC ¶ 61,109 (2006).

parties are free to exchange data requests and responses on all issues while the technical conference issues are under review. Upon completion of the technical conference and issuance of a Commission order regarding the issues discussed therein, the Administrative Law Judge shall convene a prehearing conference in this proceeding . . . .”

3. On August 2, 2006, the Chief Administrative Law Judge issued an order designating a Presiding Judge in the proceeding. On September 14, 2006, the Presiding Judge issued an order notifying parties that motions for discovery would be considered during the technical conference process. On September 15, 2006, the Presiding Judge issued an order “clarifying that such motions on discovery should be limited to issues that the Commission set for technical conference in its July 26, 2006 Order.” On September 19, 2006, Pacific Gas & Electric Company (PG&E) filed a motion to compel GTN to respond to data requests. Indicated Shippers filed a similar motion on September 26, 2006. On September 18, 2006, GTN filed a motion for reconsideration, or, in the alternative motion for interlocutory appeal of the Presiding Judge’s September 14 and 15 Orders. On September 20, 2006, the Presiding Judge denied GTN’s motion. On September 27, 2006, GTN filed an interlocutory appeal of the Judge’s September 20, 2006 order with the Chairman as Motions Commissioner. On September 29, 2006, Indicated Shippers, San Diego Gas & Electric Company, and CPUC and PG&E (jointly) filed answers opposing the interlocutory appeal of GTN.

4. On October 3, 2006, a notice of determination by the Chairman, acting as Motions Commissioner, was issued referring GTN’s interlocutory appeal to the Commission for consideration. The notice also suspended further proceedings by the Presiding ALJ while the Commission considers the merits of the appeal.<sup>2</sup>

### **GTN’s Appeal**

5. GTN asserts that the suspension order in this proceeding explicitly held in abeyance the evidentiary hearing pending completion of a technical conference and established no discovery process prior to the hearing for issues that had been set for technical conference. GTN argues that the Presiding ALJ departed from the plain dictates of the Commission’s suspension order in this proceeding and commenced a formal discovery process for issues the Commission has set for technical conference.

---

<sup>2</sup> On October 2, 2006, the Presiding ALJ postponed the oral arguments scheduled for October 5, 2006, until further notice, and pending action of the Commission.

GTN contends that the ALJ's action will directly taint the conduct of the technical conference and the remainder of the proceeding in direct contravention of the Commission's suspension order. GTN submits that allowing the Presiding Judge to implement a formal discovery procedure as to issues not set for consideration by him will (1) irreparably harm GTN because it is the only party that has submitted testimony and other evidence in this case, (2) taint the entire proceeding in a manner that cannot later be repaired, and (3) create a dangerous precedent that would serve to undermine the informal nature of the technical conference process and divest the authority of Advisory Staff to direct and preside over technical conferences in contravention of the Commission's historical practice and its clear suspension order in this case.

6. GTN argues that the Presiding Judge incorrectly relies on two statements from Ordering Paragraph (E) to support his decision in this proceeding. First, GTN states that the Presiding Judge found that "the Commission has clearly stated that the 'parties are free to exchange data requests and response on all issues while the technical conference issues are under review.'" Second, GTN states that in initiating formal discovery procedures for the technical conference issues, the Presiding Judge relied almost entirely on the boilerplate that authorizes him "to conduct further proceedings in accordance with this order and the Rules of Practice and Procedure." GTN argues that reliance on these statements is unfounded. Several parties who filed answers in opposition to the interlocutory appeal argue precisely to the contrary of GTN on all points.

### **Discussion**

7. The Commission reverses the rulings of the Presiding Judge. We commend the Presiding Judge for his initiative and his interest in taking steps to move the instant proceeding forward in an expeditious manner. The July 31, 2006 suspension order in this proceeding, however, specifically reserved to the Commission a decision on the issues designated for technical conference. Attendant to the technical conference process are all procedures necessary to reaching that decision. The order was not intended to provide the Presiding Judge with authority to entertain discovery requests on issues set for technical conference. The technical conference process is under the auspices of the Commission's Advisory Staff. Advisory Staff conducts the conference pursuant to the Commission's suspension order and reports the results to the Commission as directed by the order. The technical conference procedure is an informal one and is designed to provide for the free exchange of information outside the context of formal litigation and hearing. Any data exchanged during a technical conference proceeding is through a voluntary informal exchange of information between parties, or pursuant to a Staff data request, if deemed appropriate. The Presiding Judge would have authority over technical conference issues only after a Commission order following the technical conference directing that those issues be included in the hearing to be conducted.

8. The Commission's intent in the July 31, 2006 suspension order was that the technical conference process continue to its conclusion before formal discovery and hearing procedures commenced. The statement in Ordering Paragraph E of the July 31, 2006 Order that "parties are free to exchange data requests and responses on all issues while the technical conference issues are under review" only contemplated a voluntary, informal data exchange process while the hearing was in abeyance. Accordingly, GTN's September 27, 2006 interlocutory appeal is granted.

The Commission orders:

(A) GTN's September 27, 2006 interlocutory appeal is granted.

(B) The Presiding ALJ in Docket No. RP06-407-000 is directed to suspend formal discovery on any issues set for technical conference.

By the Commission.

( S E A L )

Magalie R. Salas,  
Secretary.